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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOEVON WALKER,

Defendant and Appellant.

D059407

(Super. Ct. No. SCD225060)

APPEAL from a judgment of the Superior Court of San Diego County, Melinda J. Lasater, Judge. Affirmed.

A jury found appellant Joevon Walker guilty in count 1 of pimping (Pen. Code,¹ § 266h, subd. (a)) and in count 2 of first degree residential burglary (§§ 459, 460). The jury also made a true finding that Walker committed count 1 for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)) and that Walker had one prison prior (§ 667.5, subd.

¹ Unless otherwise noted, all statutory references are to the Penal Code.

(b)), one serious felony prior (§ 667, subd. (a)(1)) and one strike prior (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

On appeal, Walker contends: (1) the trial court prejudicially erred when it refused to bifurcate the gang enhancement allegation from the trial on counts 1 and 2; (2) there was insufficient evidence to support the true finding on the gang enhancement in connection with count 1; (3) the trial court abused its discretion by admitting into evidence (i) a letter Walker argues was not authenticated which discusses, among other subject matters, the "do's and don'ts" of the business of pimping and (ii) Walker's tattoos to establish gang affiliation; and (4) there is insufficient evidence in the record to support his conviction for first degree burglary in count 2. As we explain, we disagree with these contentions and affirm the judgment of conviction.

FACTUAL AND PROCEDURAL BACKGROUND²

In 2007, then-19-year-old Michelle McGowan met Walker through Walker's sister. McGowan at the time worked alone as a prostitute. Walker became McGowan's pimp and with exception of a short period of time in December 2008 when she gave birth to their son, McGowan worked until September 2009 as a prostitute for Walker.

McGowan told police that in September 2009, she told Walker she was done working as a prostitute for him because Walker was taking all the money she earned while at the same time refusing to provide financial support for their son, including

² We view the evidence in the light most favorable to the judgment of conviction. (See *People v. Osband* (1996) 13 Cal.4th 622, 690.)

rejecting McGowan's request for money so she could buy diapers. McGowan also complained that her body was worn out from prostitution.

Police testified that on the morning of September 17, 2009, McGowan reported she had left her apartment to walk to the store. As she walked, McGowan was chased by Walker and three females. Fearing for her safety, McGowan ran into a convenience store and hid inside until Walker and his companions left.

The next morning, McGowan left her apartment at approximately 10:20 a.m. McGowan told police that Walker attempted to contact McGowan throughout the day but she refused to answer his calls. McGowan finally decided to talk to Walker and thus called and spoke to him.

McGowan told police that during this call, Walker said if she stopped working as a prostitute she would have to move or he would have her killed. In making this threat, Walker told McGowan he would not be the one to kill her, since he would be the prime suspect. Instead, Walker told McGowan her killing would be made to appear as a random act of violence.

McGowan told police she took Walker's threats seriously and feared for her life because Walker was affiliated with the Lincoln Park Bloods criminal street gang; Walker in the past had hit McGowan when she became "mouthy"; Walker and his companions a day earlier had chased McGowan; and Walker was a "guerilla pimp," as described by McGowan, because he was "very aggressive and use[d] force and fear to control his prostitutes."

Police testified that during this same telephone conversation, Walker told McGowan he had taken some of her belongings from her apartment and that to get them back she would have to agree to continue working as a prostitute. Police further testified that when McGowan returned to her apartment at approximately 6:40 p.m., she found her front door open, all of her clothes and some of her papers missing and on her dresser a letter addressed to Walker that, according to McGowan, had not been there when she left earlier that day. McGowan immediately called police and reported the burglary.

Early in the morning the following day, a police officer stopped a vehicle driven by Walker. Police found McGowan's property—clothing, mail addressed to McGowan, a framed certificate in McGowan's name and a black computer bag, among other items—in the trunk of the car.

On September 21, 2009, McGowan was involved in an altercation with Walker, his sister and two female prostitutes, who used their cars to chase McGowan in retaliation for McGowan's reporting of Walker to police in connection with the burglary of her apartment. McGowan went to the police station the next day to report the incident. McGowan again told police that Walker was her pimp and described how Walker had driven a car at her. At trial, McGowan denied making these (and many other) statements.

On September 23, 2009, police picked up McGowan from a safe house and drove her to the police station for another interview. McGowan described the burglary of her apartment, the altercation involving Walker and his companions and again identified Walker as her pimp. During this interview, McGowan discussed the "rules" of

prostitution set by Walker and told police that she gave Walker all of the money she earned as a prostitute, except on those rare occasions when she kept small sums (e.g., \$20) for herself. According to McGowan, if Walker found out she hid any money from him, Walker would have hit her.

McGowan also told police that Walker made her work every day and that she had to earn a minimum each day before she could stop working. McGowan volunteered that when the economy was good she earned \$500 to \$1,000 each day, and as the economy declined she typically earned \$300 a day.

In mid-October 2009, police interviewed McGowan at her mother's house where McGowan and her son were living. McGowan told police during this interview that she was Walker's "bottom bitch," which meant a prostitute that "will do anything and take anything." According to McGowan, a "bottom bitch" typically receives the worst treatment from a pimp. McGowan also told police that Walker would hit her when she got "mouthy."

In her interviews with police, McGowan also discussed Walker's involvement in the Lincoln Park criminal street gang. In addition to Walker, McGowan identified several other gang members who also worked as pimps. McGowan said the gang members shared rides to different locations for prostitution, and informed each other whether a particular location was good for business and whether there was a police presence or not in the area. McGowan told police how the gang members used the

money they made from prostitution to buy drugs for the gang to sell and firearms for the gang to use for protection against rivals and to commit crimes.

Also in mid-October 2009, McGowan spoke with another officer by phone and described her relationship with Walker, confirmed he was her pimp and explained the events leading up to the burglary and why she feared for her life. McGowan also described the telephone conversation with Walker on the day her apartment was burglarized. McGowan told the officer she had the only keys to the apartment and she had not given permission to anyone to enter the apartment.

At trial, McGowan recanted her accusations and claimed Walker was not her pimp. McGowan testified that both she and Walker had keys to her apartment and that on the day of the burglary, they had disagreed over money and as a result, she put her things in Walker's car. McGowan also testified she was high on drugs when she spoke to police about Walker and lied about Walker and his gang involvement, among other subject matters, because she was angry at him.

An expert testified about the prostitution subculture. According to the expert, many pimps are also gang members. The expert testified that prostitutes are not allowed to tell law enforcement they have pimps, that prostitutes are expected to have sex with their pimps anytime the pimp wants sex and that it was common for prostitutes to be

"branded" with tattoos of their pimp's moniker. The expert testified that McGowan had Walker's moniker, "Joe Rida," tattooed on her right thigh with a crown above the words.³

An expert on gangs testified that Walker is a member of the Lincoln Park criminal street gang and that the pimping by Walker was in association with, and for the benefit of, the Lincoln Park gang.

DISCUSSION

A. Motion to Bifurcate

Walker contends the trial court abused its discretion and violated his due process rights by denying his pretrial motion to bifurcate the gang enhancement allegation from the charges for pimping and burglary.

A trial court has broad discretion to bifurcate trial of a gang enhancement from the substantive offenses. (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1048.) "[E]vidence of gang membership is often relevant to, and admissible regarding, the charged offense. Evidence of the defendant's gang affiliation—including evidence of the gang's territory, membership, signs, symbols, beliefs and practices, criminal enterprises, rivalries, and the like—can help prove identity, motive, modus operandi, specific intent, means of applying force or fear, or other issues pertinent to guilt of the charged crime. [Citations.]" (*Id.* at p. 1049.) In moving for bifurcation, the defense must " 'clearly establish that there is a

³ The gang expert testified that the moniker "Rider" is a name of respect that has to be earned by a gang member and indicates a member who is "willing to put in work" for the gang.

substantial danger of prejudice requiring that the charges be separately tried.' [Citation.]" (*Id.* at p. 1051.)

Bifurcation may be necessary where the predicate offenses offered to establish a pattern of criminal activity are unduly prejudicial or where some of the other gang evidence may be so extraordinarily prejudicial and of so little relevance that it may influence the jury to convict regardless of the defendant's guilt. (*People v. Hernandez, supra*, 33 Cal.4th at p. 1049.)

Here, Walker has failed to establish that the trial court abused its broad discretion in denying his bifurcation motion. (See *People v. Hernandez, supra*, 33 Cal.4th at p. 1050 [noting a trial court's discretion to deny bifurcation of a charged gang enhancement is "broader than its discretion to admit gang evidence when the gang enhancement is not charged."].) The gang evidence was relevant to the pimping charge (§ 266h, subd. (a)), inasmuch as there was testimony that Walker ran his pimping business in connection with the Lincoln Park criminal street gang.

Indeed, McGowan told police that Walker and other Lincoln Park gang members shared rides to locations for their prostitution business and informed each other of where business was good at a particular location and whether there was a police presence at that location.

The gang evidence also was relevant on the issue of motive, inasmuch as there was testimony from the gang expert and from police who interviewed McGowan that the Lincoln Park criminal street gang directly benefited from prostitution by using the money

earned by prostitutes—including McGowan—to buy narcotics to sell and to purchase weapons to commit crimes and protect gang members from rival gangs. McGowan told police during an interview that when the economy was good she could earn \$500 to \$1,000 a day as a prostitute.

In addition, the gang evidence was relevant to the issue of why McGowan recanted at trial that Walker was her pimp, inasmuch as McGowan had previously told police she was in fear of her life because Walker was a member of the Lincoln Park criminal street gang and he threatened to have her killed (and make it look like a random act) when she refused to continue working as his prostitute after he declined to provide any financial support for their son. Also, given that McGowan had "Joe Rida"—Walker's moniker—with a crown (e.g., for "king") above it tattooed on her upper thigh and given the expert witness's testimony that the "branding" of a pimp's moniker on a prostitute is common practice, makes such gang evidence relevant to the pimping offense.

Because the gang evidence was relevant to the charged offenses and was not so inflammatory in comparison to the evidence of those offenses that it threatened to sway the jury to convict Walker regardless of whether the evidence established his guilt, we conclude Walker did not meet his burden of "clearly establishing" that the gang evidence created " 'a substantial danger of prejudice requiring that the charges be separately tried.' [Citation.]" (See *People v. Hernandez*, *supra*, 33 Cal.4th at p. 1051.)

Even if we concluded the trial court erred in not granting Walker's bifurcation motion, that error was harmless. (See *People v. Watson* (1956) 46 Cal.2d 818, 836.) The

trial court in the instant case instructed the jury as follows about the limited purpose of the gang evidence: "You may consider evidence of gang activity only for the limited purpose of deciding whether: the defendant acted with the intent, purpose, and knowledge that are required to prove the gang-related crime charged; OR [t]he defendant had a *motive* to commit the crime charged. You may not consider this evidence for any other purpose. *You may not conclude from this evidence that the defendant is a person of bad character or that he has a disposition to commit crime.*" (Italics added.)

We conclude this instruction, which the jury is presumed to have followed, nullified any potential for prejudice. (See *People v. Delgado* (1993) 5 Cal.4th 312, 331; *People v. Watson, supra*, 46 Cal.2d at p. 836.)

B. *Sufficiency of the Evidence*

Walker next contends there is insufficient evidence in the record to establish in count 1 that he pimped McGowan for the benefit of, or in association with, the Lincoln Park criminal street gang, or that he had the specific intent to promote, further or assist criminal conduct by the gang.

" 'In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]' [Citation.] We resolve all conflicts in the evidence and questions of credibility in favor of the verdict, and indulge every reasonable inference the jury could draw from the evidence. [Citation.] This

standard applies whether direct or circumstantial evidence is involved. [Citation.] It also applies when determining whether the evidence is sufficient to sustain a jury finding on a gang enhancement. [Citations.] Reversal is unwarranted unless "upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction]." [Citation.]" (*People v. Mendez* (2010) 188 Cal.App.4th 47, 56.)

Under the applicable former version of section 186.22, subdivision (b)(1), the People were required to prove that the underlying offense (e.g., pimping in violation of section 266h, subd. (a)) was committed "for the benefit of, at the direction of, or in association with, any criminal street gang" and that the underlying offense was committed "with the specific intent to promote, further, or assist in any criminal conduct by gang members." (Former § 186.22, subd. (b)(1)). To prove the elements under former section 186.22, subdivision (b)(1), the People may rely on the testimony of an expert witness. (*People v. Hernandez, supra*, 33 Cal.4th at pp. 1047-1048.)

Here, we conclude there is substantial, credible evidence in the record to support the jury's true finding that Walker engaged in the offense of pimping for the benefit of, or in association with, the Lincoln Park criminal street gang and possessed the requisite intent in so doing, as required by former section 186.22, subdivision (b)(1).

Indeed, as noted *ante*, during police interviews McGowan identified several Lincoln Park gang members who she said also worked as pimps with Walker. McGowan also described for police how these gang members—including Walker—worked together

pimping in order to maximize profits, avoid police and to recruit or "knock" girls for prostitution.

McGowan also told police the gang would use money it derived from prostitution to purchase drugs to sell and to buy weapons in order to protect its members and to commit crimes. This evidence alone is sufficient to support the jury's true finding that Walker committed the pimping offense "for the benefit of, at the direction of, or in association with" the Lincoln Park criminal street gang. (Former § 186.22, subd. (b)(1); see also *People v. Fuiava* (2012) 53 Cal.4th 622, 711 ["'Even when there is a significant amount of countervailing evidence, the testimony of a single witness that satisfies the standard [e.g., evidence that is reasonable and credible on which the trier of fact *could* have relied in reaching its finding] is sufficient to uphold the finding.' [Citations.]"].)

But there's more. As discussed *post*, Walker wrote a July 2008 letter to fellow gang member Glen Green (who also was his half-brother) describing the pimping business and how to succeed at it and indicating he would help his fellow gang member get started in that business once he was released from custody.

The People's gang expert relied on the July 2008 letter to support his opinion that Walker was pimping for the benefit of, and in association with, the Lincoln Park criminal street gang. The letter states Walker made a mistake when he got his "ho" (e.g., McGowan) pregnant and the "bitch [is] due [i]n December sometime. . . . Braizy,

huh?[⁴] Fuck it. I ain't with trippin. I just got step on my pimp game up." Walker also states in the letter that to increase revenue he needs a "Snow White bitch," who he claims could make a "rack[⁵] a day" if she worked in the "right spot." Walker then brags that he knows a pimp who made \$1,000 per day from a white prostitute over a two-month period, suggested his fellow gang member "[d]o the math, pimp" and said he had five "hoes" working for him at one time. The letter was signed "Rida," the moniker for Walker.

We conclude the July 2008 letter further supports the jury's finding in count 1 that Walker committed the pimping offense for the benefit of, and in association with, the Lincoln Park criminal street gang and that Walker had the specific intent to promote, further or assist that gang when he acted as McGowan's pimp.

C. Evidentiary Issues

1. July 2008 Letter

Walker next contends the trial court prejudicially erred when it admitted the contents of the July 2008 letter (discussed *ante*) in which he talked about the pimping business because this evidence allegedly lacked foundation and the prejudice from its admission substantially outweighed its probative value. (Evid. Code, § 352, subd. (b).)

⁴ The gang expert testified that because the Lincoln Park criminal street gang is a blood gang, its members replace all the "c" letters with "b" because the rival Crips gangs start with the letter "c."

⁵ The gang expert testified a rack means \$1,000.

A writing may be authenticated by any admissible evidence "sufficient to sustain a finding that it is the writing that the proponent of the evidence claims [that] it is" (Evid. Code, § 1400.) A writing may be self-authenticated under Evidence Code section 1421, which states: "A writing may be authenticated by evidence that the writing refers to or states matters that are unlikely to be known to anyone other than the person who is claimed by the proponent of the evidence to be the author of the writing." A trial court's finding that sufficient foundational facts have been presented to support admissibility is reviewed for abuse of discretion. (*People v. Lucas* (1995) 12 Cal.4th 415, 466.)

The People's gang expert testified he found the July 2008 letter during a search of Lincoln Park gang member Green, who had just been released on parole. The letter was addressed to "Little Joe Rider," Green's moniker, and as noted *ante*, was signed "Rida," Walker's moniker. The letter also refers to Green as "Little Bro," and the writer refers to himself as "Big Bro," which further authenticates the letter because in addition to being fellow gang members, Green and Walker also were half-brothers.

Moreover, the letter includes other matters that were unlikely to be known by anyone other than Walker, including that his "ho" (e.g., McGowan) was pregnant with his child and due in December, which in fact is the time period when she had the baby, and that another woman, "Tamera," was also pregnant with Walker's child and due "a month apart" from McGowan's due date.

We thus conclude the trial court properly exercised its discretion when it found sufficient foundational facts to authenticate the July 2008 letter. That there were

conflicting inferences that could be drawn regarding the authenticity of the July 2008 letter goes to weight and not admissibility. (See *People v. Valdez* (2011) 201 Cal.App.4th 1429, 1435.)

We further conclude the trial court properly exercised its discretion when it found the probative value of the letter was not substantially outweighed by the risk of undue prejudice. (See *People v. Smithey* (1999) 20 Cal.4th 936, 973 [noting a trial court has broad discretion when determining the admissibility of evidence].) As noted, the letter was highly relevant to the pimping charge and the attendant gang enhancement attached to that charge in count 1, and was not any more inflammatory than the evidence adduced at trial apart from the letter (e.g., that Walker was a "guerilla pimp" and that he threatened to kill McGowan if she did not continue to work as a prostitute).⁶

2. Tattoos

Walker contends the trial court prejudicially erred when it admitted his tattoos to show gang affiliation. We disagree.

First, this evidence was relevant to the gang enhancement attached to count 1. (See Evid. Code, §§ 210 & 351.) Indeed, the People's gang expert described each of Walker's tattoos and how they pertained to the Lincoln Park gang. That expert also relied

⁶ In any event, we conclude any alleged error in admitting the July 2008 letter was harmless because it was not reasonably probable the verdict would have been more favorable to Walker absent the alleged error in admitting it, given the abundance of *other* evidence (summarized *ante*) in the record supporting Walker's conviction under section 266h, subdivision (a). (See *People v. Partida* (2005) 37 Cal.4th 428, 439, citing *People v. Watson*, *supra*, 46 Cal.2d at p. 836.)

in part on the tattoos to conclude that Walker was an active member of the criminal street gang at the time of the offense. Walker's contention that the probative value of the tattoos was minimal or nonexistent because the prosecution could not establish when he received the tattoos goes to weight and not admissibility.

Second, the probative value of this evidence was not substantially outweighed by the probability that its admission would create undue prejudice to Walker. (Evid. Code, § 352, subd. (b).) We will not disturb a trial court's exercise of discretion under Evidence Code section 352 unless its decision exceeds the bound of reason. (*People v. Funes* (1994) 23 Cal.App.4th 1506, 1519.) Here, in light of the gang enhancement and the fact that Walker admitted to police that he was a member of Lincoln Park, we conclude the trial court acted well within the bounds of reason when it ruled to admit Walker's tattoos as evidence of his gang affiliation.⁷

D. *Burglary Conviction*

Finally, Walker contends there is insufficient evidence to support his first degree residential burglary conviction in count 2 because he contends the record is bereft of evidence to establish he entered McGowan's apartment with the intent to commit theft. (See §§ 459, 460.)

⁷ As was the case with respect to the admission of the July 2008 letter, to the extent there was any error in admitting evidence of Walker's tattoos we conclude that error was harmless because it is not reasonably probable the verdict would have been more favorable to Walker absent the alleged error, given the other evidence in the record connecting Walker to the Lincoln Park criminal street gang. (See *People v. Partida*, *supra*, 37 Cal.4th at p. 439; *People v. Watson*, *supra*, 46 Cal.2d at p. 836.)

Section 459 provides in part: "Every person who enters any house, room, apartment . . . with intent to commit grand or petit larceny or any felony is guilty of burglary." Section 460, subdivision (a) provides: "Every burglary of an inhabited dwelling house . . . is burglary of the first degree."

"Commonly, [the burglar's intent to commit a felony or theft] must be inferred from the circumstances of the charged offense or offenses. [Citation.] ' "While the existence of the specific intent charged at the time of entering a building is necessary to constitute burglary in order to sustain a conviction, this element is rarely susceptible of direct proof and must usually be inferred from all of the facts and circumstances disclosed by the evidence." [Citation.]' " (*People v. Holt* (1997) 15 Cal.4th 619, 669.) " ' "When the evidence justifies a reasonable inference of felonious intent, the verdict may not be disturbed on appeal. [Citations.]" ' [Citation.]" (*People v. Cain* (1995) 10 Cal.4th 1, 47.)

Here, the evidence in the record shows that McGowan ended their "relationship" in September 2009 when she told Walker that she no longer wanted to work as a prostitute for him. As a result, on September 18, 2009, Walker entered McGowan's apartment and took some of her belongings, then told McGowan over the telephone what he had done and what she needed to do to get back her belongings.

When McGowan returned to her apartment that evening she found the door open, her clothes gone and some important papers missing. McGowan immediately called

police to report the burglary. Also McGowan found on her dresser a letter addressed to Walker from his parole agent, which had not been there when she left earlier that day.

Early the next morning, police found McGowan's missing property in the trunk of Walker's car, after he was pulled over by police. When asked for his home address during the traffic stop, Walker did not give police the address to McGowan's apartment.

The jury also heard testimony that at or near the time of the burglary, McGowan told police she alone had the keys to the apartment and she had not given anyone—including Walker—permission to enter. Moreover, the jury also heard how Walker threatened to kill McGowan unless she returned working for him as a prostitute; that McGowan took Walker's threats seriously and feared for her life, inasmuch as there was a history of physical violence in their relationship, Walker was affiliated with a criminal street gang and Walker and his companions had chased McGowan and she feared they would attack her.

Because there is substantial evidence in the record supporting the finding that Walker unlawfully entered McGowan's apartment with the intent to commit theft in order to force her to return to prostitution, we affirm Walker's conviction for first degree burglary in count 2. We reach this conclusion despite McGowan's trial testimony supporting an opposite finding, viz. that on the day of the burglary, Walker had McGowan's permission to enter her apartment and that *she*, and not Walker, had put her belongings in his car. (See *People v. Riazati* (2011) 195 Cal.App.4th 514, 532 [noting a court of review does "not reweigh the evidence, resolve conflicts in the evidence, or re-

evaluate the credibility of witnesses."]; see also *People v. Fuiava*, *supra*, 53 Cal.4th at p. 711 [noting that a " 'substantial evidence inquiry examines the record in the light most favorable to the judgment and upholds it if the record contains reasonable, credible evidence . . . upon which a reasonable trier of fact *could* have relied in reaching the conclusion in question,' " and noting that " '[o]nce such evidence is found, the substantial evidence test is satisfied . . . [e]ven when there is a significant amount of countervailing evidence' "].)

DISPOSITION

The judgment of conviction is affirmed.

BENKE, Acting P. J.

WE CONCUR:

NARES, J.

McDONALD, J.